



STATE OF ILLINOIS PROCUREMENT POLICY BOARD

David Vaught, Chairman

Members: Michael Bass, Ed Bedore, Ricardo Morales

April 27, 2011

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RE: Senate Committee on Procurement

Dear Honorable Senate Committee Members and Staff,

After receiving your request for information regarding the recent procurement reform and aspects that may or may not be working, Procurement Policy Board (PPB) staff began work right away on a summary of known concerns. In the following Procurement Policy Board correspondence we outline anticipated complaints or concerns by the general public as well as State agencies that the Committee may receive. For members of the General Assembly who have received information that some of the reforms may have caused unrealized hardships on those affected and that some adjustments may be necessary, below please find a list of possible concerns accompanied by PPB comment.

Procurement Communications Reporting. Procurement Communications Reporting has made its way to the surface in most, if not all, procurement reform conversations. Unfortunately a lack of fundamental understanding of what was required to be reported led to unnecessary over-reporting and unfortunately a significant decrease (or in certain cases, complete stoppage) in agency communications with vendors. As of the date of this letter, there have been 10,118 procurement communication reports published since January 1, 2011. A major contributor to over-reporting was the absence of administrative rules to govern Procurement Communications Reporting. Fortunately, Executive Ethics Commission rules that were developed with the Governor's office have passed the JCAR process and were effective on April 21, 2011. It is PPB opinion that these rules have established more substantial and easier to understand guidelines for reporting. For most State employees involved, the addition of these rules will provide much needed direction in how to comply with the law. A second issue that has contributed to agencies being unwilling to communicate with current and potential vendors was apprehension on the part of State employees as to what could be said and if the communication needed to be reported at all. The addition of rules will go a long way to addressing communication reporting concerns, however, as long as the requirement to report is effective, specific agencies will need to lessen the stance of little to no communication and report based on the rules in place.

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Another concern with Procurement Communications Reporting that was not addressed in statute or in rule would be University communication in regard to grant and research initiatives. The research and development environment can and has been so extremely competitive that any possible slip in disclosure could mean losing in the ever important race to be the first to publish research results. This impact cannot be overstated, as often times being the first to publish can have major effects on future grant funding and partnerships. Additionally these requirements have caused the loss and inability to retain and attract the brightest minds in research development. University comment has been that the Illinois requirements on University researchers do not exist in other states and most are unwilling to put themselves at risk to potential disclosure. The PPB recommends that the new EEC rules be allowed some time in operation before alternatives are sought, but the General Assembly may consider the possibility of legislative relief, within reason, to be very narrowly granted to research initiatives that are related to grant funding, particularly within the Universities.

Procurement Communications Reporting System. As a result of the procurement reform legislation, the Procurement Policy Board worked with the Department of Central Management Services Bureau of Communication and Computer Services (CMS/BCCS) to develop the Procurement Communications Reporting System (PCRS). The PCRS provides an automated vehicle for State employees to report their communications. Upon release, issues were encountered with certain employees unwilling to provide personal registration information even though safeguards were in place to protect all information. The PPB immediately addressed this issue and worked with CMS/BCCS, who developed the system, to create a manual process to create IDs and passwords for these employees. When a user registers for an ID and password, the system is set up to validate a person's driver's license against the Secretary of State's database and then to validate the employee against the Group Insurance Database to ensure that the person is who they claim to be and that that person is actually a State employee. Once the employee is validated, their personal information, i.e., driver's license number, etc., is not retained. It should be noted that only 243 help desk calls related to log-in (ID and password) issues have been received as of the date of this memo since January 1, 2011, which is extremely low considering the number of State employees required to report and the number of reports currently published on the PPB website. Most of the issues that have been relayed to the PPB have revolved around what is required to be reported, especially prior to April 21 when no administrative rules were available to govern communications.

The PPB is currently working with CMS/BCCS on Phase II, which will make the system more user friendly and easier for employees to report the required communications. One major consideration was the request by State employees to allow them to create a "user profile" which will auto-populate certain information that now has to be entered manually each time a report is made. Additional enhancements include a much more dynamic search and sort on both the internal and public sides of the application, as well as the future ability for State employees to append an amendment to previous communications, which will aid in on-going communication reports between the employee and another individual.

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Ensuring Prudent Communications with Vendors Regarding Execution of Contracts.

Prudent communication has become a concern due to the unwillingness of some agencies to communicate at all with existing and potential vendors as well as the adjustment period experienced with the addition of the Independent CPO/SPO structure. As stated in the previous paragraph, in the absence of rules governing Communications reporting, some agency personnel were directed to limit outside communication only to absolutely critical communication. Again we believe that this issue will begin to correct itself with the approval of the EEC communications rules.

To further this concern, as the new procurement processes were and continue to be introduced, procurement continued as usual, with agencies and universities enacting the procurements, gaining required internal approvals and then vetting through the CPO office that effectively added another layer and more time in the process. In the course of the past few months the CPOs' offices have become more involved through the entire process and thus are better equipped to finalize procurements and be responsive to potential and existing vendors. Initially it may have been difficult to determine where in the process a specific procurement was awaiting review and untimely vendor communication often occurred. The complete overhaul of the procurement processes is an ongoing endeavor and more time is needed for the process to be refined and streamlined. The PPB recommends additional time for the process to play out before legislative relief is offered.

Communication between the Chief Procurement Officers, State Purchasing Officers and the Agencies and Public Universities. The PPB has been notified that the staffs of many agencies and universities are reluctant to communicate or share procurement files and documentation with the CPOs and SPOs and are not allowing the CPOs and SPOs to attend meetings relevant to their positions. In fact, the PPB was included in a communication from an agency director on April 4, 2011 that gave direction to employees to communicate and cooperate with the CPO and SPO – nearly 9 months after the law took effect. It is the recommendation of the PPB that language is added under Section 10-20(b) to the effect of “The chief procurement officer and state purchasing officer shall, at their request, have direct communications with the executive officer of a state agency in exercising duties, shall have access to all procurement-related records and may attend any procurement-related meetings.”

Vendors Approaching Agencies/Universities. Encouraging private enterprises to share expertise and ideas with the State has become an issue as potential vendors have concerns that by sharing their knowledge and expertise they will not be allowed to participate on any possible future solicitations. One major example of this concern is best outlined as it relates to research. In many circumstances when a researcher reaches out to a manufacturer or laboratory, they in a sense, become partners in the research initiative. Additionally, more times than not, these new relationships are working to develop a product or process that most likely does not already exist. This can create difficulties with complying with the Procurement Code if the one and only vendor capable of producing the required equipment is precluded from bidding due to their prior



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consultations. To add further concerns, a large number of research projects are grant funded and in these grants a specific vendor is outlined for partnership.

This concern could very easily stretch to other areas of procurement; however the most at risk environment would be research. This very easily could be an area where some narrowly defined legislative relief, within reason, is necessary to better outline standards for pre-solicitation vendor assistance.

Sole Source Hearings. Sole source hearings have become an interesting subject. It would be appropriate to say that a large percentage of these hearings are un-attended and more importantly un-commented upon and un-objected to. It must be noted that there have been cases where the sole source hearings have worked the way in which we believe the General Assembly intended them to. A few specific sole source procurements have been amended or even cancelled and reevaluated due to public and/or Procurement Policy Board comment through sole source hearings.

To our knowledge, the overriding concern is the amount of hearings that are held with no objection and no one in attendance. To address this concern the PPB recommends the addition of statutory language that a hearing should be required to be held upon a protest or a request from the general public or by a request of the Procurement Policy Board. The most important aspect is ensuring that intended sole source procurements are publicly posted in such a way that all other potential vendors have the opportunity to review and comment in a timely manner. All other sole source requirements should remain in effect.

Renewals and Extensions that Exceed \$249,999. Section 20-60 of the Procurement Code requires that “the CPO shall file a proposed extension or renewal of a contract with the Procurement Policy Board prior to entering into any extension or renewal if the cost associated with the extension or renewal exceeds \$249,999. The Procurement Policy Board may object to the proposed extension or renewal within 30 calendar days and require a hearing before the Board prior to entering into the extension or renewal”.

In the course of due diligence, the PPB has formulated a list of questions that are, for consistency, asked on any extension or renewal that exceeds \$249,999 to determine if a hearing before the Board is necessary. This requirement was among the many changes instituted with the SB 51 reforms and Board staff is receiving some negative feedback, from Agencies and Universities, as to whether certain procurements should be held to the same standard as others. It is the intention of staff to maintain consistency across all agencies and universities and require that responses be received, not only timely, but completely. Although this requirement does require additional verification of renewals and in turn adds additional time to the process, it is not the arduous task some may interpret it be. As early as last week we received comment from members of the General Assembly that these renewals will continue to be heavily evaluated and consistent cooperation is necessary.

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Subcontractor Disclosures. Disclosures for subcontractors is a concern we have been made aware of, but lack sufficient details to provide a comment. There has been some proposed legislation to set a dollar amount (HB1890 and SB0133 both set the threshold at \$25,000) on what may qualify a vendor as a subcontractor and additional proposed legislation that sets contract status as a method of qualifying sub-contractors.

As this topic is addressed in the course of the procurement committee we will be better equipped to comment. Currently the assertion would be made that accepting subcontractor disclosures is a potential way to track Business Enterprise Program participation and limiting the receipt of subcontractor disclosures could possibly limit this information.

University Athletic Events. Universities have difficulties in complying with the Procurement Code with respect to their athletic events. Most notably, public Universities are governed by the NCAA that establishes rules which University athletic teams must adhere to as well as naming specific vendors that are required to be utilized under certain circumstances. Additionally, in relation to post-season play, the window for procurements is often 1 to 2 days which creates difficulties when complying with time and posting requirements of the Code, Board of Elections certifications, disclosures, in addition to source selection – typically the only option available is to use the emergency method of procurement. It is the recommendation of the PPB that relief is offered in the form of legislation that creates an exemption for university athletic events, however, Procurement Bulletin posting requirements of the Code should still apply for public transparency.

Registration with the Board of Elections. The Code requires that every bid submitted to and every contract executed by the State must contain a certification by the bidder or contractor that they are either not required to register as a business entity with the State Board of Elections or that the bidder or contractor has registered as a business entity with the State Board of Elections. Currently, if a bid is received without either the certification or registration, the bid must be rejected for non-compliance, which limits competition. It is the recommendation of the PPB that relief is offered in the form of legislation that removes the requirement that the certification or registration be required to be included with the bid, but rather, if one or the other isn't included then the agency or university will have an opportunity to request the information after bid opening with the provision that the certification must be provided prior to award or contract execution, rather than reject the bid for non-compliance.

Efficiency Through Technology. The PPB recommends that a “Central Vendor Portal” be created as the one and only destination for annual registration with the State of Illinois. This is an area that with some advancement could provide significant relief to all potential vendors when doing business with the State of Illinois in addition to reducing government costs. The current, multiple registration processes create a burden on vendors and potentially limits competition. Upon initial registration with the Central Vendor Portal, vendors would complete an online form that fulfills all of the registration or prequalification requirements for the State of Illinois which is linked to a central database that would be used by all procuring agencies and universities



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Statewide. As envisioned, the vendor would be able to upload copies of the various statutorily required certifications, or the database could be linked to the different systems. The purchasing agency could then look up the vendor by a unique identification number that is supplied during registration to ensure that they meet the statutory bidding requirements, i.e., the State Board of Elections certification, Illinois Department of Human Rights Number, and confirmation that the vendor qualifies for the Business Enterprise Program or Small Business Set Aside Program, as examples. This would end disqualification for failure to provide registration documents, as all certifications and requirements would be fulfilled electronically during registration. It would also increase competition through ease in registration and bid submission and contribute to the state of Illinois "Green" initiatives through the elimination of endless paper through repetitive registration with each agency or University.

In closing, the concerns the Procurement Policy Board has put forth may not represent all that exist, but certainly concerns that have come to light through agency and University communications. The concerns and subsequent comments contained within this correspondence may come short in the eyes of those affected, of fully detailing their difficulties or the extent of relief that they would like to obtain, but rather provided a brief point of view for some of the main areas affected by the most recent reform and some simple ways to address outstanding issues. To summarize, the PPB recommends additional time for the new Chief Procurement Officers to better refine their processes with more cooperation from the agencies and universities. In regards to the Procurement Communications requirement, since the EEC rules have just been adopted, more time is needed to allow the process to develop as was intended by the original Procurement Reform Legislation.

Sincerely,

Aaron Carter
Executive Director